

**SPECIAL COMMITTEE ON RIVERFRONT ACTIVITIES
AND BASEBALL**

October 4, 2004

5:15 PM

Chairman Lopez called the meeting to order.

The Clerk called the roll.

Present: Aldermen Lopez, Gatsas, Guinta, DeVries, Smith

Messrs.: K. Sheppard, T. Clark, R. Brooks, R. Ludwig, W. McCabe,
K. Clougherty, D. Roedel, R. MacKenzie, M. Castagna,
Atty. Rotche, Mayor Baines

Chairman Lopez addressed Item 3 of the agenda:

Gill Stadium Project

Chairman Lopez stated we received the report. Do you want to bring us up-to-date, Kevin?

Kevin Sheppard, Deputy Public Works Director, stated I can give a quick update. From what I understand Gill Stadium is in the process of being transferred over to the Parks & Recreation Department. There are some outstanding items to be addressed by 6 to 4 to 3. They are going to be addressed in the next week or two. This afternoon we actually received a fax from Harvey Construction stating that they will be assuming the remainder of SRI's warranty on the turf. That is a letter that I know Mr. Thomas has been waiting for. We just got that this afternoon and we will review it. Other than that, from what I understand the turnover has been going pretty well.

Chairman Lopez stated they played football over there this weekend. Does anyone have any questions? Everybody seems to be satisfied with it.

a) Baseball Stadium Project

Robert Brooks, Parsons Brinckerhoff, stated the new stadium is going along quite well. As you can see from a distance the steel is up around third base. We will be wrapping the steel around home plate this month. The good news is we started construction of the field this week, today and we hope to have the field fully

installed by the end of the month. We talked to Ron Ludwig before the meeting and Ron is coming over to take a look at the field installation some day this week. In regard to the ballpark itself, things are going along quite well. In regard to the roadway adjacent to the ballpark, that is going a bit slower than we anticipated. We did run into some soil that had to be removed from the site. I am sure you were aware of the soil. I think the newspaper had an article on it. It is all old material from the Danais building of years ago. We found some remnants of it and went through the proper permitting with DES and had it removed from the site. We have also been working with the various utility companies, in particular, PSNH and Verizon about securing their manholes against potential rising of the groundwater and we have their manholes waterproofed in regard to some safety issues associated with going in confined spaces. So the roadway is a bit behind schedule. We will know better within the next one to two weeks of where we are on it. We have some good weather right now and things are moving along pretty well. Right now we are still waiting to get additional bids in. Payton says they do have them in and they are in the process of evaluating them. Right now the status hasn't changed from last month to this month in regard to the overall project status on the bids. We are still about \$200,000 under budget. The outfield wall is about 70% complete. It will probably be a month or more before the cold weather sets in and I urge you to come down to the site and take a look. It is very impressive. The wall should be complete by then and we should have most of the steel up. We could even have a meeting in the Payton site trailer if you would like.

Alderman Gatsas asked the under budget of \$200,000, does that include the \$130,000 of expenditure to move the dirty dirt.

Mr. Brooks answered no.

Alderman Gatsas asked so you are not really \$200,000 under budget.

Mr. Brooks answered just based upon where the bids came in.

Alderman Gatsas asked have we closed on this transaction. Have we received our funds?

Thomas Clark, City Solicitor, stated no it has not closed yet.

Alderman Gatsas asked didn't I understand the closing date was supposed to be September 3.

Solicitor Clark responded we will be discussing that as the next item.

Alderman Gatsas asked is that on the agenda.

Alderman Guinta stated the last time we met we talked a little bit about the bids that were coming in and I think you were going to provide a list to the Committee of who bid and who won the bids.

Mr. Brooks stated I forwarded a list to Mr. Castagna. Mike, did you...

Mike Castagna responded no I haven't.

Mr. Brooks stated it is about a 10-page list. I will make sure that you get it tomorrow.

Chairman Lopez stated just get it to the City Clerk and they will get it out to the Aldermen.

Mr. Brooks responded okay. It is a 10-page list. There were probably over 200 people who were contacted and it is a full list of everybody that was sent either an e-mail or a direct notice of the project.

Alderman Smith stated I was down there today and I noticed the red brick wall in right field and the light stands but are you still on schedule for April because I am concerned about Gill Stadium.

Mr. Brooks answered yes.

c) Financials

Solicitor Clark stated if you could give us a few minutes, Mr. Clougherty is downstairs getting something typed up to bring to the meeting.

Chairman Lopez stated okay. In meantime, let's move on to Item 4.

Communication from Ron Ludwig, Director of Parks, Recreation & Cemetery, providing an update on the conversion of Gill Stadium.

Ron Ludwig, Director, Parks & Recreation stated I don't really have a lot to add. I tried to summarize in my written communication some of the items that we needed to take care of to convert Gill to football. We got most of them done. Some went easier than others and there is a learning curve for us in terms of converting the field over. We will get better at it as time goes on. There are a few things missing here and there and a few things got lost in the shuffle as the transition is taking place but I think everything considered things over the weekend went fairly well. We tried to make the facility safe. We were a little short on certain items like

fencing and things like that. If anyone went to the game you will probably notice that there wasn't full circulation around the field as we typically have and like to have. We had to limit access I think on the Beech Street end a little bit in front of the scoreboard, which may or may not have been problematic. We are still kicking around some other issues with the field and warranty and the surface around the food in terms of whether we should be allowing food out onto the bleacher area. We did allow it this weekend and I really haven't talked to the men down at the ballpark to see what kind of issues they may or may not have. We did put down as much plastic and plywood under the bleachers as possible to try and protect the field but most of the information you read about synthetic surfaces you find that they don't recommend that a lot of food or drink be brought out onto the field. We are going to get some of it. For this weekend as opposed to trying to stir any controversy in terms of whether people could bring a hot chocolate or something out onto the field, we really didn't stop them. We will take a look at that and see how it plays out for the future in terms of whether we should restrict food items or those kinds of things. So far, we haven't. Other than that, in the Enterprise we have purchased...again you know that we were in front of you several times requesting some assistance in the Enterprise to help us make some purchases. We have expended about \$26,000 in various items to do the field conversion thus far and that excludes any kind of lighting agreement, which we really should purchase in the near future and also a couple of pieces of equipment that we use. We have borrowed equipment from our golf course, which is needed on our golf course on a regular basis to do the conversion and it did work. It does help. We don't have the manpower to do it so we have to use equipment and we have to use it wisely in a way not to void the warranty on the field. Some of those things exist. We won't run out and purchase them. Another thing that worries us is snow. It is a little early to talk about it. We know when Thanksgiving comes we will be expected to have that field cleared of snow. We are checking with several people who have already been through the process, Southern NH University being one. We are working to try to investigate methods of getting snow off of this field so that we can play on Thanksgiving. We don't want it to be a controversial item because we know how important that game is to everybody on Thanksgiving morning. We are certainly making every effort we can to make the field ready and usable. We did try a piece of equipment that came with the Memorial High complex. We actually tried it at West first since we own West field outright before we brought it over to Gill and tried to groom the field a little bit and it seems to help. I think that it will take some time to get some of the pockets of crumb rubber to settle in. There are still pockets where we need to work that rubber into the synthetic surface. I think in some cases we may actually not be afraid to remove a little where it might have been on a little heavy or something in our opinion and there are people with other opinions on that but I think in general the grooming process with the machine we got from the field turf job at Memorial has helped out and while you can't over sweep the field I think

there is a process that we have to go through to get this field to break in. I personally believe that you will see for football this field getting a little bit better as time goes on. That is what we saw at the West field as it was played on it actually got a little bit better and a little faster and the players liked it. You will see less of the crumb rubber coming up as time goes on and the field gets used more, especially by the football team that marches up and down a little bit more than a baseball team would. We saw that at West. People were taking less and less crumb rubber home in the cuffs of their pants so to speak in a period of time. So I think that is what we are going to see happen here. Other issues related to seams and things like that – we see some seams in the outfield. We don't see any adverse effect that is indicating that the field is suffering from any kind of improper installation at this point but again we are keeping a close eye on it and if they do become issues we will certainly share that with Harvey who is going to accept the warranty.

Chairman Lopez stated you had a conversation with the Finance Officer and we have your request for \$75,000 to \$100,000 and most likely you don't need that much money so could you keep the CIP Committee informed and up-to-date so that they can get the actual figure. Kevin did have a conversation with you to get what you needed and then we would take care of you and I just want everybody to know that. We don't want you to go in the hole in end. Make sure that your correspondence is updated to reflect what you actually spent. You said \$26,000?

Mr. Ludwig responded as of this date we spent \$26,122.59. If we are looking at some of the other items we are looking at about \$73,000 right now. Again, the big item there that I am concerned about is lighting. Right now we have no way to get on to the field to take care of any lighting problems. We would have to contract soon with Musco Lighting. We have contracts at Livingston and Memorial that covers Musco Lighting. They actually come in and relamp and do those kinds of things for you. It is actually a 10-year agreement and a very good deal as far as we are concerned and that is why we took it on the Livingston project and also on the Memorial project and the West project also. It is only the Gill project and the way the lighting came about that we haven't taken advantage of a service contractor. In the past we were able to change the lights and change the lamping and do cleaning with the assistance of the Fire Department but we can't get on the field with that kind of heavy apparatus anymore. Really, the Musco Lighting contracts were about \$24,000 and that is the way to go. It covers a 10-year period.

Alderman Smith stated I would just like to thank Ron and his department for all of the work they did. They were there until 5 PM Friday afternoon setting up the bleachers and you know all of the parts weren't there so they had to Mickey Mouse and get it fixed up. As far as the field, they were out there on Saturday watching the guy from Boston College fix the football field and he fixed the

soccer field yesterday. I am very pleased with the results. Like I said before there are just a few major items needed now. Some seats need fixing and they are under warranty. We need a little bit of paving done and some landscaping. I am sure that everything will come to a final result by the end of this month. I want to thank Ron and his staff for all of the work they did.

Chairman Lopez asked Solicitor Clark are we ready to discuss the financials yet.

Alderman Gatsas stated first can we get a copy of the definitive written final document. I don't think we have ever received one.

Solicitor Clark asked which document.

Alderman Gatsas responded the purchase proposal. In the document that we agreed on as a full Board it said "set forth in the final definitive written agreements executed and delivered by all parties hereto."

Solicitor Clark asked can you tell me what you are reading from.

Alderman Gatsas stated I am reading from the draft that you gave us on August 25 that had a drop dead date of August 25 and closing on September 3. It said there would be final documents drafted and signed.

Solicitor Clark asked are you looking for the signature page to that document.

Alderman Gatsas answered no I am looking for a final definitive written agreement or is this the final agreement.

Solicitor Clark stated you are looking for the closing documents, the deeds and other agreements that were all finalized.

Alderman Gatsas responded it says here "set forth in the final definitive written agreements." There must be something more definitive than this piece of paper we talked about.

Solicitor Clark stated you are talking about the final closing documents. That would be the deeds and the other agreements.

Alderman Gatsas asked so there was nothing that was drafted in case there was a default. There is nothing in this agreement that talks about a default.

Solicitor Clark answered not in this purchase proposal there isn't.

Alderman Gatsas asked where is the final default...so you are going by what was in the original...

Solicitor Clark interjected you are going by the Master Lease. As you are aware, back on August 25 the Board met and reviewed a purchase proposal that was presented to the Committee prior to that. The Board authorized that. I called for approval of the Board by the 25th and a closing by the 3rd, which were the dates the Roedels had asked for. The parties then began drafting the final documents very vigorously. I can tell you that staff has spent an inordinate amount of time on this project up until the last 15 minutes ago trying to get these things all finalized. The agreements have been executed and are in escrow for the residential parcel and for the retail parcel. Those are all set and ready to go. There have also been documents placed in escrow on the hotel parcel, however, the Roedels in their negotiations with the Department of Environmental Services with the state have been trying to get some more clarify on what the obligations will be in the future, which has delayed the closing. The actual closing date in the Master Lease called for a closing by September 13. That is where we are now. We are here to discuss options, which the parties have asked us to come back to you with.

Chairman Lopez stated I know that staff has been working very hard to try and get this accomplished. The attorney for Mr. Roedel, Mark Fernald, had some issues with it as Solicitor Clark alluded to. I want to make sure that everybody knows they have worked hard for many hours and I wish we could charge for all of the hours. With that, we are at a point where I think the Chinburgs can move forward. We have three separate deeds and we are supposed to get all three deeds approved at once in order to move forward. With that, we are in a dilemma with the Roedels, which the City has bent over backwards for as much as we can.

Solicitor Clark stated I know that staff has been as I told you working up until the last minute and Kevin just wanted to give the Committee some information and then we would be happy to discuss any questions you may have.

Alderman Gatsas stated I don't think my question pertains to anything he is going to give us. My question is that obviously we were under a time constraint that said we must do this on the 25th or we don't have a deal and follow through with some parameters of the proposal and I guess...when did we know there was a problem and who knew about the problem and why wasn't this Committee convened a lot sooner to explore those problems long before we were where we are today? You can't convene the Committee but I would like to know who knew about the problem.

Solicitor Clark responded I believe just about everybody on City staff who was working on this project was aware that there were some environmental issues that had cropped up.

Alderman Gatsas asked did anybody on this Committee know about it.

Solicitor Clark answered I believe the Chairman has been kept up to date.

Alderman Gatsas asked anybody else.

Solicitor Clark answered the Mayor was also kept up to date. I am not sure if I spoke to any other Committee members.

Alderman Gatsas asked, Mr. Chair, did any other Committee members know about it. Did you have discussions with anybody else on this Committee?

Chairman Lopez answered no because I didn't have any clear discussion with staff other than they were working on this and hoping that they would sign today. They were hoping that they would sign last Friday. They were hoping that they would sign at 10 AM today or at 4 PM today.

Alderman Gatsas stated I am just going to make a point that obviously there is a \$29 million project before us. I respect that you are the Chairman but I respect that this Committee has every right to know what is going on. We shouldn't be told about things in the eleventh hour telling us that we have another problem and we have to discuss this and go forward. So maybe with a \$30 million deal and all of us being elected officials maybe this project needs to meet once a week so that we know as much as you do because I respect...at least I should be aware if my constituent asks me what is happening I should be able to give him an answer. I think it is unfair that there are little meetings held weekly bringing people up-to-date and this whole Committee isn't part of it.

Chairman Lopez responded let me assure you there hasn't been a weekly meeting to update people.

Alderman Gatsas asked do you participate in the meeting with the department heads.

Chairman Lopez answered no I have not participated in any meetings with the department heads. I had a phone conversation with Bill Jabjiniak and a phone conversation with Tom Clark for the simple reason that it is a legal issue that all of the lawyers are involved in.

Alderman Gatsas asked how long ago did you have that conversation.

Chairman Lopez answered last week and we are having a meeting this week. I was even asked to postpone the meeting and I said no because this is an issue that I wanted to bring before the Committee to see exactly what they want to do. I think in all fairness as we all know legal issues can be very complicated especially with the state and everyone else who is involved with this process. With that, my latest conversation with Solicitor Clark was this afternoon and they were meeting at 4 PM and they just came out of that meeting and we just received this from the Finance Officer. So all of the information I have I am bringing before the Committee otherwise I could have cancelled this meeting and this would have gone on and on. This is the issue before us. I think that we will let Kevin explain the document that was just passed out, which seems self-explanatory but for the record I will let him explain it and then we will go from there. We do have an issue. I understand that.

Alderman Gatsas stated right and we should close this deal on the 26th and the City should receive all of its money. End of conversation. That is what this Alderman is looking for and I think at some point we need to reflect in the agreement that there is a default clause. We shouldn't be looking at extending...

Chairman Lopez interjected let's not debate it. I agree with what you are saying to a point but let's get an explanation from the Finance Officer and see which direction we are going to go in here.

Kevin Clougherty, Finance Director, stated I think as Solicitor Clark stated all parties have been working diligently on this. It has been an evolving issue with the environmental groundwater at the site and I think everybody is trying to proceed in what is a fair and equitable process for all parties. We are at a point where in order to move forward DES has suggested some testing be done on the property where the hotel will be located. The Roedels have agreed to do that. It will take about two weeks to get the testing done and get the results back and give some definitive information so they feel they have what they need to make their Brownfield application and do all of the other things that they might be entertaining. In order to do that and give the additional three week extension what happens is we run up against some dates in the agreements that the Board of Mayor and Aldermen need to change. That is what we, as a staff, are recommending this evening. If you extend the closing date to October 26, 2004, which is to allow for this testing to be done and to get a definitive response from DES so that the Roedels can make their decisions on how they want to proceed. What we would have to do is change the initial payment of the principal of the Promissory Note from Eric Chinburg from November 1 to December 1, 2004. As you recall, the timing of this was to allow Mr. Chinburg to go out and get his

advance notice of clients so he could raise his financing. If you are going to extend this time period he has to have the ability to go out and address that part of the process. If you go ahead...so that is one option you have this evening. The second option is you can close on the two parcels with Mr. Chinburg and Downtown Manchester Visions immediately. They are willing to do that tonight or tomorrow but in order to do that there are two issues that have to be acted on by the Board. One is to extend the closing date to October 26 as we said and second of all authorize latecomer agreements in favor of Mr. Chinburg on the road costs and the baseball developer on the stadium wall costs be paid by the purchaser of the hotel parcel. What they said is basically they have this wall that right now the Roedels have an interest in and the ballpark has an interest in and if for some reason someone else is to step in there or the Roedels decide they don't want to make that commitment then as I understand it the baseball developer wants to make sure that they are not footing the whole bill for that piece of the wall. So again I think it is the feeling of the staff that these are fair recommendations. It will extend the process a little more than anybody wants but in the interest of fairness we are willing to recommend to the Board to go ahead with these options and move forward.

Alderman DeVries asked does staff have a preference between the two options tonight and does anybody want to explain why they would advise one over the other.

Mr. Clougherty answered my understanding is that Option II would be the preferred option because that would allow us to close with the Chinburg property as well as the Manchester Downtown Visions piece. You would still have to extend the deadline and I think it addresses one of the issues that is of importance to the baseball team. I hope I am speaking for the staff when I say that Option II would be the preferred report that we would like to see the Committee endorse this evening.

Alderman DeVries asked if we do exercise Option II, which would be closing on the two parcels immediately and extending the closing date on the Roedel parcel do we feel there is any added risk involved in that other than the latecomers agreements that are already addressed.

Solicitor Clark asked added risk in which way, Alderman.

Alderman DeVries responded of the development not going forward as we envision today. Are we at greater peril if we exercise them that way as opposed to holding all three of the parcels up until...

Solicitor Clark interjected in my opinion no. If you close on the Chinburg parcel and the retail parcel it allows them to begin construction almost immediately. They can go out and start their work. You will be getting your development started. The latecomer's agreements will only be if the Roedels fail to purchase the parcel and the City takes it back. The City wouldn't be responsible for the fee. It would be paid out of future proceeds in the event you sold it to another developer.

Alderman DeVries stated I understand that but I don't think you quite addressed my question. Is there a greater likelihood that this entire project will come to fruition in the division that we have today if we wait and close on all three parcels together as opposed to two parcels now and one later.

Solicitor Clark responded I don't believe so.

Alderman Guinta asked when did DES issue this letter.

Solicitor Clark responded there have been several DES letters. I am not sure which one you are referring to.

Alderman Guinta stated relative to the groundwater.

Mr. Clougherty asked are you talking about the DES letter raising the issue of the groundwater. As Tom said there have been several of them.

Alderman Gatsas stated why don't you produce them all and then we can answer which ones we want to look at.

Alderman Guinta stated that is the road I am going to go down but I would like to know initially...and I will tell you why I want to know this in advance. The timing on this project is crucial and I think some members of this Committee have been critical about receiving information and working on these very, very difficult issues in a timely fashion so we are doing everything we can to allow the project to move forward and I think the general idea here is and everybody wants this project to move forward. We don't want it obstructed but by the same token we want to make sure that the City does not become more at risk. I am very interested and there are a lot of technical issues that I think we need to deal with but one of the issues I would like to deal with is when did this begin relative specifically to the groundbreaking. As I understand it, that is the issue that is requiring an amendment.

Solicitor Clark stated you may want to ask one of the Roedel brothers to come up because most of these were discussions between DES, their environmental

engineer and the Roedels directly. The City wasn't at those meetings. I do know that the latest draft of their last letter was issued October 1.

Alderman Guinta asked was there anything prior to October 1 in writing. Again, my understanding is that the City owns the property so if there are any issues with the property wouldn't those letters be directed to the owner, which is the City?

Mr. Clougherty answered my understanding is the Roedels have been the applicants for some permitting and that has been the vehicle through which most of the discussion has been happening.

Chairman Lopez called Mr. Roedel forward.

Alderman Guinta stated I am trying to get a grasp on when this issue came about. Was Roedel the first company notified of this particular issue?

David Roedel of Roedel Companies stated I guess if we are getting to the remediation of the water problems we have been working with DES closely for two years. The issue of potentially cleaning through remediation versus monitoring, which is a possibility I presume came up rather recently due to source materials, which is very dirty dirt. That whole issue started to be raised in the area that we are talking about, which is the corner of both the Blouin parcel and the corner of the City land or hotel site. This issue became at the forefront of DES in mid to late summer when the road construction started.

Alderman Guinta asked is that when DES notified your company.

Mr. Roedel answered not directly. What we did is we had met with DES toward the end of August or early September to talk about some of the soil management plans we had submitted back in June, which is a construction management plan, environmental assessment forms and those sort of things. They had comments and we were meeting with them to discuss the comments. They suggested that we take some further tests on the Blouin piece, most specifically the parking easement or the 300' or 400' feet of parking easement we were looking to get for the hotel. They were concerned that that area could be more contaminated than they previously imagined and that I believe was in response to a letter...actually I think it was a report that they received from Haley and Aldridge, which I believe was working for the baseball team. They had summarized what they had found during the initial road construction and that, I think, alerted DES to the fact that there could be some contaminants in that soil that they either weren't aware of or that were more widespread than they originally thought.

Alderman Guinta asked is anybody aware of when the Haley and Aldridge was issued to DES. Did we pay for it or did the baseball development pay for it?

Mr. Brooks answered I don't have the exact date of that report. It was early September and Haley and Aldridge is under contract with the baseball team. The baseball team pays for them.

Alderman Guinta stated so this came out because of the report...

Mr. Brooks interjected immediately according to state regulations if you run across soil that potentially you feel is not clean you have a duty and obligation to notify state authorities and that was done.

Alderman Guinta asked so you notified the state that portions of the Roedels...

Mr. Brooks interjected no we notified the state of exactly what we found, which was within the right-of-way of the roadway.

Alderman Guinta stated here is my point. Did you notify Roedel of that?

Mr. Brooks answered yes.

Alderman Guinta asked at what point.

Mr. Brooks answered as soon as we found it. They had representatives on the site weekly.

Alderman Guinta asked did you notify the City.

Mr. Brooks answered yes the day it happened. Mike Castagna was out there.

Alderman Guinta stated well that was my initial question. When were we notified and when was Roedel notified? I would like to see copies of these...it is hard for us to make a decision on this without all of this documentation and this paperwork. Again, I want to be clear to constituents as I think every member of this Committee wants to be in articulating some of these positions and why we need to make some of these changes.

Mr. Clougherty responded again Alderman I think most of the correspondence as I understand it has gone through Highway and I know that Frank has been involved. He is not here tonight and I am not going to speak for him but we will certainly make an effort to get a copy of all of that correspondence for the last two or three weeks and make it available to you.

Alderman Guinta asked are you saying this was in September or August.

Mr. Brooks answered the beginning of September.

Alderman Guinta stated I think and disagree if I am out of line Chairman but at some point the Committee is going to be expected to make a vote for a critical change. I think it is fair for the Committee to be provided at least a heads up on it when the parties think it is going to...when the parties recognize that it is going to happen. As a result of that, we are going to need to see all of that correspondence. I am not quite sure from the City side who is responsible for getting that to the Committee but again it begs the question why isn't this Committee meeting on a more regular basis because maybe had we had our hands around this issue three or four weeks ago we could have addressed it without having to move these dates around. It sounds like if this happened at the beginning of September that was at least a month ago. You are telling us that it is going to take a total of two weeks to complete what DES is asking you to complete in terms of testing?

Mr. Roedel responded yes. We commissioned our environmental engineers to do the tests they have asked us to do. They will be out there on Wednesday. Like I think I said before we did the test on the Blouin parcel and they turned that around in about 10 working days. DES has been extremely cooperative in that they have reviewed our reports within about 48 hours.

Alderman Guinta stated I think we need to tighten up the communication here because it sounds like we could have dealt with this in the beginning of September and depending on the outcome of the report we probably would not have to be in the position to move this closing.

Chairman Lopez stated let me just comment on one thing. If the Committee wishes to receive every piece of correspondence that the staff produces, that is a lot. I think issues come up, technical issues and the legal issues come up and even if I had that document and I will speak for myself, in front of me, and DES said they had to do this I don't think this Committee could do anything about it.

Alderman Guinta replied if I can defer to Kevin because I know he wants to respond first.

Mr. Clougherty stated until recently I think there was an indication or a thought on the part of the developers, as well as the City, that this might be resolved at the DES level without having to go back for an action by the Board to extend in which case we would not have had to come to the Board and we would have been able to close and that was only until recently.

Alderman Guinta responded but you are talking before the Haley and Aldrich report. You are saying since the Haley and Aldrich report?

Mr. Clougherty stated since the Haley and Aldrich report there has been a lot of discussion back and forth between...I know Frank has been involved in some discussions and I know that the other staff has been involved and there was every effort to try and resolve this without having to amend the documents and bring this to some other resolution. We have just come to the conclusion in the last 48 business hours that that is not going to happen and that we really need to extend this and take a different route.

Alderman Guinta replied that may be true but let's look at it from a different perspective. What was the original closing date we were shooting for?

Mr. Clougherty responded September 13.

Alderman Guinta stated so there was a hold up at that point and it was this particular issue and I don't recall the Committee being notified that that was one of the primary reasons for the hold up. Maybe there were other issues but again the Committee is not being notified of some of these key issues when they happen. I am not looking for the Committee to micromanage the staff or the development but I do think at times that the Committee can act in the capacity that we are supposed to in moving this project along and working through some of these issues. It is not only staff and the development team. There is a Committee here that is very knowledgeable and might be able to navigate some of these waters a little more effectively. I would like to be a little more part of that in terms of the notification.

Solicitor Clark stated I just want to be clear that you understand that this DES issue is not the only issue that held up the closing. That was just one...that is actually just the last issue.

Alderman Guinta responded I do recognize that but I will also reiterate that a month ago this Committee wasn't notified that this was one of the issues that was holding up the closing. I think it is fair that if the closing is being held that the Committee...

Solicitor Clark interjected first of all City staff wouldn't have notified you prior to the 13th because we believed that the closing was going to take place.

Alderman Guinta replied but that was a month ago.

Alderman Gatsas asked where does this automatic 10-day extension come from.

Solicitor Clark asked which automatic 10 day extension.

Alderman Gatsas replied it says in this document that we were given that we all voted on...

Solicitor Clark interjected that the purchase would be by September 3. That is the request that was made by the hotel developers because they felt they wanted to get on site and get started so before the winter came they could get some construction done. That is the way it was presented to this Committee and to the Board. However, the Master Lease does say that they have until 60 days after the decision of the arbitrator to make their closing and that would have been September 13.

Alderman Gatsas asked is there a reason that you folks that we entrust, along with the taxpayers and the citizens of this City entrust, to give us that information because when I look at this agreement nowhere in there...I mean if I have to go back to a Master agreement to find out what the actual closing date is, you aren't giving me all of the information and I really, really feel slighted.

Solicitor Clark responded we did not withhold information from the Committee or this Board. The Master Lease has been in existence now for a number of years. It has always stated 60 days after the arbitration decision is when you have to close. That was told to this Board and that was told to the Committee during those discussions. The September 3 date came about because the Roedels had asked for an earlier closing to get their project underway.

Alderman Gatsas asked so if the letter that came from DES was a relative issue then I would assume that if it came at the end of August or the first of September somebody would have told us because let's not forget that this deal was predicated on a \$40 million tax base. I am sure that the Roedels are very educated business people and they understand what it is with monitoring or the other version of what they have to do and if somebody comes back to them and says this remediation could cost you \$1 million they are probably going to say you know what the deal isn't feasible anymore. At that point we no longer have our \$40 million of tax base so during this whole circumstance, by separating the deeds and cutting out this deal instead of closing it in its entirety and letting whoever purchased the property to do their subdivision and go forward...but I guess we did this because we didn't want to inflict additional transfer tax stamps on the deal but we are now putting the City and the taxpayers at risk and also the Roedels at risk. I don't think it is fair that somebody knows there is a letter out there and we don't have it. I don't know, did the Chairman get a copy? Did he know about it?

Chairman Lopez responded I didn't get a copy.

Alderman Gatsas asked did you know about it.

Chairman Lopez answered I knew last week that they had a problem with the closing. How many times do we have to say it? I am not on trial here. You can either accept my answer or not.

Alderman Gatsas stated I certainly think that this Committee is going to come back with a recommendation to the full Board.

Chairman Lopez responded absolutely. We have the issue and we are going to address the issue

Mr. Clougherty stated again I have not been the one who has been communicating on the environmental issue but I am not sure that is a definitive letter. I think it is more of a process in communication and the exchange of data and testing results and a lot of verbal communication. I don't think and maybe I am wrong but I am not sure there was ever a letter from DES that said something definitively in terms of a yea or nay on this. They were trying to work through a process that involved engineering studies and the exchange of data. I think there is a lot of that around but a specific letter I don't think has been made available until Friday when DES was trying to put in place a communication that would say what their position was and how, given the existing data they had, far they were willing to go ahead with an approval. That is my understanding. If somebody else has something different or knows of a letter then we will search it out and get it to you.

Chairman Lopez stated staff has recommended Option II. Will somebody walk us through...will the Roedel people come back on October 26 and say we need more time if that is the case and another problem comes up? Walk us through what happens?

Walter McCabe stated in terms of Option II my understanding is that we would postpone the Roedel closing until the later date for them to finish their testing. At that point, any of three options I presume are available. 1) they are satisfied with their arrangements with DES and they close and the third parcel is closed; 2) they are not satisfied with the results and as a matter of fact they are so unsatisfied that there is no workable, feasible financial solution and they chose not to close; or 3) they request, as you put it, additional time to continue to try and work through what might be required and the cost involved regarding DES. As I understand it from DES, getting your arms around the issue has been a bit of a moving target over the past period of time. That is what I heard second hand through this process. If the Roedels close, I believe there is no issue. If they request an

extension of time, that is up to the Committee and the Board as to when they wish to do it at that point if Option II were to be selected. If they refuse to close, we with Option II would consider the Master Lease to continue in effect with regard to the hotel parcel and the letter of credit that relates to the hotel parcel would continue in effect with regard to the obligations under the Master Lease. Practically speaking, one of the obligations of the Master Lease is that the hotel be completed on that parcel for business early in 2005 and that is not likely to occur under Option I so that would go into default presumably.

Alderman DeVries stated I guess this would probably be a question for Tom Clark. The City or any municipality are they treated differently by DES when held accountable for any hazardous materials that are on-site and clean-up? Would they be treated differently then the Roedels as a private corporation?

Solicitor Clark responded not that I am aware of.

Alderman DeVries stated so the City is already at risk owning that parcel. By delaying a transfer...I mean if there is a clean-up to be completed there the City will end up paying for that and will be held just as accountable as the Roedels might be.

Solicitor Clark responded that is too general a statement. It all depends on exactly what DES says is in there that needs to be cleaned up and who the prior owners were and what other obligations they made on the land. Generally, DES doesn't go in and make you do a clean up if you are not doing anything with the land.

Mr. Clougherty stated along those same lines it is the feeling of the staff, I believe, that it is in the best interest to have the Roedels go forward and do that testing because it has to be done at one point anyway and at that point they are paying for it and are responsible for it and can get the results back. From some of the studies that have already been done there is an indication that maybe this isn't going to be a poison pill and we can get this project going, which I think the Roedels have said time and time again that they want to go forward. It is unfortunate that this thing has come around and is taking a few weeks to resolve but I think it is in everybody's best interest to go ahead and get the study done and get the report done and then evaluate at that point and move forward. That is why the staff is recommending Option II.

Alderman DeVries replied if I could pursue that line of questioning a little bit more because I will ask the Roedels the same question. Part of the hesitancy of closing on this property today would be the assumption of any risk or cost associated with that clean up because today there is a prior owner that may be held accountable for that and if it transfers to another private enterprise do you feel that

it is more likely that you would be held accountable for something you would be assuming immediately? Is that part of the delay?

Mr. Roedel responded yes I think it is. We don't want to misrepresent ourselves here. We always knew there were a lot of environmental problems on the site. It is not that. It is some of the new information that has presented itself in the last 30 to 45 days, which has indicated maybe a higher level which would bring out a whole new set of circumstances about the remediation. As I understand it as a novice who has a crash course in the last couple of weeks, remediations can be extremely expensive. You know hundreds of thousands and millions of dollars of actually pumping water but monitoring is not a real expensive venture and that is something we assumed we were going to have to do. The remediation is the scary part and that is really what it comes down to – the source. Are you the source of the problem? The historical data that the DES is operating under indicated that the source was off-site. It was basically east of the property but with any of these sciences the more data you get, the more due diligence you get it could indicate the source on our site. No one believes that is the case but I think we really need to be responsible and do the tests that they need us to do to find that out. You don't know what the cost is going to be until they have enough information to give you a qualified answer and up until this point unfortunately they just don't have enough information.

Alderman DeVries stated I would like to ask an additional question and I will swing it back to staff. As far as recouping or initiating development so that we have potential tax dollars underway, without a doubt separating out these parcels and getting construction on the Chinburg site going in a more timely fashion than the additional two week delay is advantageous to us. We are at the tail end of the possible window for construction season. Has anybody had discussions with Mr. Chinburg to see...if we do go through with this motion and separate out his parcel are the shovels actually going to hit the ground on his site or are we going through this motion for nothing?

Mr. McCabe stated if I might regardless of whether the shovels hit the site, Mr. Chinburg has agreed that the make whole agreement would still apply, which means he would be making up the taxes for not having the development on the site. His council is here. I don't know if he would still be able to break ground this fall. My guess is we are starting to get a little bit late on that but he would be better poised to continue to move forward and he would continue to take the financial risk of development and taxes that would be due.

Chairman Lopez asked Mr. MacKenzie are they ready to go down there as far as Mr. Chinburg is concerned.

Robert MacKenzie, Planning Director, stated I believe the punchlist for the final site plan approval by the staff is basically complete. I think the only outstanding issue is the emergency access to the south. The Chinburg plan is basically complete as I believe the hotel site is also.

Chairman Lopez asked is the emergency exit going to be held up because of Jac Pac. What is the situation there?

Mr. MacKenzie answered we have, as I understand it, a due date of due diligence geared towards November 15. If that, for some reason, doesn't happen then we would have to or someone would have to negotiate with Tyson for that emergency access.

Chairman Lopez asked so we are basing this on the assumption that we are going to buy Jac Pac in order to make an exit for him.

Mr. MacKenzie answered that was the action of the Board and that is what we are planning at this point.

Chairman Lopez stated I thought the...there is not enough room without the land at Jac Pac for an exit. I thought we made a pathway that was sufficient for the Fire Department. Am I correct there?

Mr. MacKenzie responded as I understand it there was a preferred emergency access route identified that was not along the Riverwalk. The Riverwalk actually goes down and heads towards the Nycoa building. That is not the preferred location for an emergency exit.

Alderman Gatsas stated I have to make sure I raise this correctly. I didn't understand you to say that we bought Jac Pac for an emergency exit for the condominium development correct?

Mr. MacKenzie responded that is correct. I did not say that.

Alderman Gatsas asked what did you say then.

Mr. MacKenzie answered I said that at this point that is the most logical course for providing access to the Chinburg parcel. If the City is going to purchase that, then that is the logical means to do it. If the City is not going to purchase it, then either Chinburg or the City would have to negotiate with Tyson for an easement. I believe there was a letter submitted early on to Tyson requesting to discuss that but once the City entered into negotiations to purchase, that was set aside.

Alderman Gatsas asked was that sent to this Committee, that letter that was sent to Tyson.

Mr. MacKenzie answered again we did not prepare that. I understood that came from the City.

Alderman Gatsas stated I have a follow-up to staff. Mr. McCabe, you are sitting here telling us that we should take Option II, which closes on the two parcels and if the remediation is for \$1 million which was a number that I asked Mr. Roedel if he would close and he say that would probably be a problem, correct me if I was wrong, then why would you suggest to us being our council that we close on two parcels and maybe not be able to see \$40 million in development?

Mr. McCabe responded first I believe you asked for the recommendation of City staff. I am actually not City staff despite the fact that I have been here a lot on this project. The City staff had asked me when they got to this point what were the options. The two options to move forward are the two that have been presented, I think, here and seem to be doable with the developers based on negotiations since Friday. It was clear that a closing was not going to take place. Your other option is obviously one that I believe the group might want to discuss in executive session, which are what are your rights under the documents.

Alderman Smith stated in the Master Lease it says and we have quoted the September 3 closing and it says, "closing may be delayed up to 60 days" and so forth like that and I just went back into the Gill Stadium agreement and at the time it was put in it said developer may request an extension of time and the developer must also check with the owner, which is the City of Manchester. Now the gist of this is to get this project going I don't know, David, if you did your study and DES came by and said everything is alright and you could proceed if it was heavily contaminated would you withdraw after that period?

Mr. Roedel responded we don't know the answer to that until...it is not just the level of contamination but what type of...what action we are going to have to take to clean the site. I think heavily contaminated as far as soils are concerned is not a real problem. Although it is an expense we know how much the cost is relative to how many cubic yards you have to take off site. I think the only thing we are really concerned about here is the term remediation because water remediation is the one course of action, which could adversely affect the project economically. That is quite literally pumping water and evaporating into the air type of situation. Transporting soils off site is a known number. We can deal with that. Monitoring wells is natural attenuation and you just check that the water isn't getting worse off but other than that you really don't have to do to anything besides monitor it on a yearly basis. That is not a large cost and it wouldn't adversely affect the project

economically. We don't anticipate a large problem. It is just one of those things that is a due diligence that DES needs us to do in order to make a recommendation or to approve an action plan for cleaning it up. As we sit here today I don't think there is enough information to say...it really comes down to the economic number of how much we have to do.

Alderman Smith stated then I would like to ask...the ones that did the environmental studies, Haley and Aldrich, we didn't test and put sites all over that acreage.

Mr. Clougherty stated it was my understanding that it was just related to the roadway and the stadium areas.

Alderman Smith asked in other words everything was concentrated on baseball and Mr. Catapano and Downtown Visions didn't do any environmental studies. I thought they did.

Mr. Brooks stated if I can answer that this issue came up when they started to excavate the road and this excessive chlorinated solvent contaminant above the known levels really started this and that really started the investigation in this particular area and that was the beginning stages of it.

Alderman Smith asked when were you informed or when were you notified that this was much more serious than other parcels or other acreage.

Mr. Brooks answered this happened the end of August, beginning of September when this was discovered.

Alderman Roy stated I have a question for Mike. David touched upon where the source may be for this. What is your expectation? You know this land about as good as anyone.

Mike Castagna responded at this point it is speculation. This was a...or the level of contaminant I believe was a surprise. Everybody knew it was there but we were talking about a heavier concentration of soil contamination so until this process is done Haley and Aldrich is on the site continually monitoring this and until we have the finite details there is no sense in speculating at this point and that is what they are waiting for.

Chairman Lopez stated I am going to excuse Alderman DeVries and Atty. Arnold who have to go to another meeting for a few minutes.

Alderman Roy stated David and Fred thank you for your patience throughout this development process. Have you had a chance to discuss with City staff the two options that were put in front of the Committee this evening?

Mr. Roedel responded yes we have been in almost hourly contact with City staff for a couple of weeks.

Alderman Roy asked if we go forward with Option II, which is to close on the two parcels – Chinburg and Downtown Visions immediately, extend your closing and authorize the latecomer agreements is that sufficient in order to get the additional data for you.

Mr. Roedel answered we believe it is. We are using three weeks. We did speak to our environmental engineer and he did verify that they will be on-site Wednesday. Test results will get back within 10 working days or two weeks and that would leave the DES response time but throughout this project they have responded extremely quickly so I think allowing a week for DES should be more than enough time. The three weeks, we believe, will do it.

Alderman Roy stated we had a short statement from our Bond Council on what the best case and worst case scenarios might be for this project. Are you in agreement with all of those statements?

Mr. Roedel responded I think those are accurate.

Alderman Roy stated I could throw out about seven more questions if we have time but all of my pertinent ones are done.

Alderman Gatsas stated Mr. Roedel you said that the contamination appeared to be to the east of your property or hotel site or on the eastern...I didn't quite...

Mr. Roedel responded if you are looking at a site plan...concentrating on the last 30 days there has been more and more information available and in looking back at the information when we tested the Blouin parcel of what was on our site, our parking easement, those results came back in rather favorably but at that point DES strongly suggested that we move to the south of that parking easement and for the first time they asked us to test on the hotel site. They thought that because of the higher level of contamination they were finding in the roadway construction that there could possibly be source material on the hotel site and that is what they have asked us to go out and test is an area to the south of that site. I guess when I was saying east I was referring to the higher levels of contamination that I think everyone has known existed where they put the road in.

Alderman Gatsas stated I guess I have a question for Bond Council. If we go with choice 2 and the Roedels have found that there is a significant remediation to the property, which means that they don't have an interest in going forward, why would we think some latecomer would be interested in coming forward?

Mr. McCabe responded presumably it is a question of several factors. One is cost. In other words there is a price being paid now for the land and it is a question of how big is the problem to be cleaned up. The second is what is going to be done with the property. I am not clear what another user would do with the property but it may or may not require the same treatments in order to end up with the same result. The third is that over time and this time may be a fair while, it is the case that environmental technology has changed and things that were not treatable become treatable and things that were not economically treatable become more economically treatable.

Alderman Gatsas asked what do we tell the taxpayers of Manchester when we don't realize our \$40 million project because there is no latecomer. Let them pay the bill?

Mr. McCabe answered at the moment if the Committee and the Board ultimately choose not to proceed there are certain recoveries available under the documents but there are also limits in the fact that that would not produce \$40 million worth of new development on the site. It certainly wouldn't produce any immediate development. That would have to be sometime in the future thereafter presumably.

Alderman Gatsas asked do you want a motion.

Chairman Lopez stated the staff is recommending Option II and you see Option I before you. I will entertain a motion.

Alderman Smith stated I firmly believe that we can't separate the two. We have to take the whole ball of wax and not separate it. We should take Option I and II.

Alderman Gatsas moved to extend the closing date to October 26 with total payment as was required by November...I want to be very clear that I don't know what is in the Master Settlement Agreement or the Master Lease or anything else but I don't know if there is an extension from October 26 but I am assuming October 26 is the drop dead date without any other things that could be in there that could extend the time. Is that correct, council?

Solicitor Clark responded it was the staff's recommendation that that would be the drop-dead date. The staff could not extend anything without coming back to you people.

Alderman Gatsas asked what day of the week does that fall on.

Chairman Lopez answered a Tuesday.

Alderman Gatsas asked why wouldn't we go until Friday for a closing. If we are going to extend something why wouldn't we...

Solicitor Clark interjected we could but they asked for three weeks and that was three weeks.

Alderman Gatsas asked what is the date on Friday, October 29, then my motion is to extend this to October 29 with no change in the initial payment plan, which would have been called for November 1, 2004 and all three parcels will be closed together.

Mr. Clougherty stated I think by extending the closing date and not extending the timeframe for the Chinburg request, which is to change the Promissory Note, I think that puts him in an unreasonable position and that is why the staff has included that as part of the recommendation.

Alderman DeVries stated that is exactly the question I was going to ask because when we had the presentation by Kevin Clougherty earlier he indicated that there was a certain amount of time that Eric Chinburg would need in order to prepare the documentation and the financing, etc. but from the September...does it need to be a full month.

Mr. Clougherty responded my understanding is that he needs about 45 days to be able to get the financing and everything else lined up to be able to meet those deadlines so he gets penalized in this if you don't extend the deadline.

Alderman DeVries stated October 26 to December 1 is not 45 days though. Is there somebody that wants to tell us the timeframe that would be necessary?

Mr. McCabe responded I believe that is actually shorter than 45 days.

Chairman Lopez asked does somebody want to speak for them.

Solicitor Clark stated Atty. Peter Rotch.

Alderman Gatsas asked did they execute their original agreements, Kevin.

Mr. McCabe answered yes the documents have been executed by Mr. Chinburg.

Chairman Lopez asked the attorney for Mr. Chinburg to answer the question.

Atty. Peter Rotch, McLane Law Firm, stated I am representing Mr. Chinburg. The request of Mr. Chinburg is to have at least 30 days to make the payment moving it from November 1 to December 1. I have to remind the Committee that Mr. Chinburg was ready to close on September 3. He was anticipating September 3 to November 1 as the period. When the closing got advanced to hopefully last Friday, Mr. Chinburg was saying that was less than the original time and he was going to go with it but to now move the closing to the 26th he is saying I need that extra month.

Alderman DeVries stated in light of the absence of the emergency exit through the Jac Pac property to the south of Mr. Chinburg's development is this considered by you to be an unnecessary hardship extending the closing date to October 29. What I heard earlier is he is not ready because there is still one outstanding piece that he is waiting to have finalized for Planning Board action before he can actually start the development.

Atty. Rotch responded he would like very much to close as soon as he can. I am not his engineer but on the Jac Pac piece the easiest way for the emergency access is to cut into the Jac Pac parking lot although the City does own an easement because the Riverwalk has a sewer easement going down to a public way.

Alderman DeVries stated maybe I should ask Mr. MacKenzie one more time for clarification. We certainly do not want to cause unnecessary hardship but is that piece ready to be started if we were to close sooner?

Mr. MacKenzie responded again as Peter Rotch indicated the best emergency access would be across the current Jac Pac parking lot, not down the Riverwalk. The Riverwalk actually dips down below one of the peers and then it would be difficult, but not impossible, to get that access back up to the so-called Biron Street. Clearly the best emergency access is across the parking lot and if the City does purchase that property then that is solved. If the City does not purchase it we would have the two options of working the Riverwalk finding a way back or negotiating with Tyson to get access across that existing parking lot.

Alderman DeVries asked so if I understand what you are saying that as an issue can run independent from his closing and initiating other portions of the

development. If, in fact, Mr. Chinburg were to close tomorrow he has other items that he is approved to get started on?

Mr. MacKenzie answered yes it is a separate issue. Ultimately he will have to solve that but it is a solvable issue. He can actually start doing some site work once he purchases the property even without site plan approval. He could and probably would get under some construction.

Alderman DeVries responded thank you very much because I think that clarifies for me...I do agree with staff that Option II seems to make more sense. There is no reason for us to impose yet another delay on the Chinburg property, which is a component of the \$40 million taxes that we are anticipating. They have already...staff has already gone on record saying that they do not feel there is any greater risk of peril for us by following Item 2 over Item 1 and I am not sure that I understand the reasoning for following with not separating the three out.

Mayor Baines stated I have a couple of comments. First of all I do support the Roedel's request for this extension to do their due diligence. What I don't want missed in this conversation and David can speak for himself but they are optimistic that this will solve their concerns and I am not sure that some are really hearing that and saying some things that might not reflect that optimism. The staff remains confident with optimism that we can work with DES through this issue. I think a significant gap in the staff presentation was the absence of Frank Thomas tonight and his extensive work and his cooperation with the DES officials to try to resolve those issues right up until today so that they felt agreement. The staff, I have to personally commend. They have not kept one bit of information that they had that would have benefited the Committee in any way. The only correspondence, written correspondence received from DES came late on Friday because there was a reluctance from DES to provide written statements because they were working with the people involved with the development project to give the Roedels a comfort level that would enable them to sign that document. Notwithstanding that, and that was only in a draft form when we received it and that should be distributed when we receive the hard copy is in fact that they feel by doing these additional tests that they will be able to sit down with DES and get the comfort that they feel they are entitled to. I don't think at this point in time that it is any more than that. The staff and the Roedels and all of the developers have been working very diligently to make this project a reality. The staff has done an absolutely commendable job. I think they spent about seven or eight hours in meetings on Friday with all of the parties involved trying to do everything and represent the City and the Committee as the staff has been empowered to do with the legal advice that Tom Clark has led with Tom Arnold and obviously our Bond Council to lead us to a successful conclusion of this project. The Roedels have been with us since Day 1 on this project. They have been very diligent because

they are good business people and all they are doing here today is saying we would like another couple weeks extension and we feel confident and I don't want to speak for David that he has this confidence that this is going to put them in a position that they are going to be able to move forward with.

Mr. Roedel stated I have nothing to add. I think the Mayor and staff are working with us and I think that is right. We are confident now and we have been confident throughout the entire process. It really is a business decision and I guess fortunately or unfortunately it is a science and legal issue. What is under there and legally what they can or cannot make us do. I think that is what we are asking for is the time to do all of the required due diligence to make the appropriate decision for everybody.

Alderman Guinta stated I would be curious...the question I have is if we separate these two...I would like to look at best case and best case is to grant the extension and find the comfort level from DES and move forward but in a worst case scenario, if there is a change in DES policy and there is remediation required then that is going to...and I think the phrase that you were using is economically prohibit this portion of the project and that is the concern that I have.

Mayor Baines responded the only thing I said and again I read...again it was late Friday when I saw the draft of the letter and basically what was stated in the DES letter was that the history of that kind of ground...and correct me Mr. Clark or somebody if I am misstating but the essence of dealing with groundwater contamination is a monitoring situation. There is no history...am I stating that correctly Tom?

Solicitor Clark answered yes.

Mayor Baines stated they monitor these situations. This in all indications is not the site where the contamination emanated from and they will work with us and the developers regarding that situation. I have to feel confident that there is going to be a positive outcome for everyone involved. My experience is you deal with everything as it comes upon you. Everything can be dealt with if we remain focused and leave the staff to do the legal work they are doing so well and that we keep ready to move in a variety of directions and look at options if that became an issue. We don't anticipate that it is going to be an issue at this point in time. We could speculate tonight from here until the cows come home. The fact of the matter is we are going to know within a couple of weeks and we will deal with the situation as it is presented to us in two weeks. To make speculation now that the project is not going to happen and this is not going to happen and the taxpayers are going to be betrayed is talking about something that none of us know this evening.

Alderman Guinta stated I don't think anyone is going that far.

Mayor Baines responded well I heard some of that tonight.

Alderman Gatsas stated obviously I said it, your Honor, and with all due respect as soon as you separate this piece out and if the statement didn't say authorize latecomers...if it merely said authorize Roedel to close at a later date, I would have a better sense of comfort but when you put latecomers in there that tells me that if the remediation is such that the Roedels at some point say this is not a feasible deal for us to do that means that another latecomer is coming in. We should never separate this deal because this deal was a \$40 million project from the beginning and that is what is should conclude at.

Mayor Baines responded that is a policy decision of the Board and I appreciate your clarification.

Alderman Roy stated while I respectfully disagree with Alderman Gatsas, when I look at the two options put in front of us today we have done everything as a Board to separate out these pieces of land. We have not dealt with the one developer or the Master Lease the way it was written. We have worked ahead of schedule to separate them out into agreeable parcels of land and we have the opportunity to close on two parcels, which will increase our tax base, which is the ultimate goal for our taxpaying public. We have the opportunity to put Chinburg and Manchester Downtown Visions on record as owners of those properties instead of the City. Whether the Roedels go forward or not that is an economic decision they have to make with all of the data we have. Has this deal been backwards from the beginning? I fully agree that it has but to put the Roedels in a situation of having to make a financial situation without data I think we have put every developer who comes in front of us on this deal in that position. I personally think that we should separate them, that we should go ahead and close on the two parcels that we have ahead of us that are ready to go forward and put shovels in the ground and create tax base for our taxpayers.

Alderman Gatsas replied seeing that he kindly disagrees with my position, I certainly will remind my colleague from Ward 1 that not all of us on this Committee voted to separate this deal into three different parcels. Some of us thought that it should stand as one. Myself being one of those members. So again if we are going to separate it out and again my problem is not giving the extension to the Roedels because I believe they should get the extension but my position is that we shouldn't separate it out because if they walk out of the deal we don't have the \$40 million deal. Now if you as an Alderman want to tell the taxpayers that they should take that burden on if the latecomer never appears then that is fine. That is what you should tell them but I am not going to tell them that.

Alderman Roy responded I would much rather tell my taxpayers in Ward 1 that I provided them \$20 million worth of tax base then I provided them \$0 tax base because we delayed the entire project.

Chairman Lopez stated right now we have a situation that we need to make a decision on. Staff has recommended Option II and you can see Option I. A motion was made by Alderman Gatsas but nobody seconded it. Do I hear another motion?

Alderman Smith moved to take the staff recommendation and include both I and II.

Chairman Lopez responded it has to be one or the other. Either Option II or Option I.

Alderman Smith asked can I ask the lawyer for Mr. Chinburg a question before I make another motion. You said that you needed time like until December 1 for the extension of 45 days is that correct?

Atty. Rotch answered that is correct.

Alderman Smith asked and Mr. Roedel you would like an extension of three weeks correct. That is why I am trying to put the two together. You need three weeks before you get your final results right?

Mr. Roedel answered yes.

Solicitor Clark stated I believe there is a little confusion here. As I understand, Atty. Rotch and Mr. Chinburg have both said they don't need an extension until December 1 if we allow them to close immediately.

Alderman Smith moved to recommend staff recommendation II to close the two parcels (Chinburg and Manchester Downtown Visions) immediately, extend the closing date to October 26, 2004 for the Roedel's parcel and authorize latecomers' agreements in favor of Chinburg on road costs and baseball developer on stadium wall costs to be paid by purchaser of hotel parcel. Alderman DeVries duly seconded the motion.

Alderman Guinta stated Kevin I am looking at the equalized value analysis and as I understand it for Tax Year 2003 the hotel property is \$6.5 million and if you add everything together it brings a total equalized value of \$39.7 million.

Mr. Clougherty answered right.

Alderman Guinta asked if we take a hypothetical and we take the \$6.5 million out are we still able to make the debt service payment.

Mr. McCabe answered just to clarify Kevin asked me to speak to that. We have as one of the closing documents make whole agreements for each of the three parcel purchasers with regard to making up the difference between what we would like to have in place to make sure the debt service is covered and what will actually be built in place by the time the first debt service payment comes due in February of 2005.

Chairman Lopez stated let me try to help out here. I am looking at 2005 the debt service payment was \$976,000 and in 2006 it is \$1,241,666. Does that still hold true, Kevin?

Mr. Clougherty responded right.

Chairman Lopez stated I just wanted to get out those numbers that we have.

Alderman Guinta asked can you repeat the motion.

Chairman Lopez stated the motion is to accept staff recommendation II.

Alderman Gatsas asked which one of the two options put the City greater at risk.

Solicitor Clark answered I believe we have already addressed that. It depends on what you are referring to as risk.

Alderman Gatsas stated well you are my legal council and you should be protecting me from any risk but what do you think they are.

Solicitor Clark responded I am not sure I can always protect you from any risk.

Alderman Gatsas replied well I hope you would. They have a legal council that is protecting them from risk so I congratulate my colleague from the Senate.

Solicitor Clark stated there is plenty of risk to go around for everybody on this deal. I believe the City financially is in a better position with Option II. It allows you to close on two parcels, start receiving your purchase price and it allows them to get in the ground.

Chairman Lopez called for a vote. Aldermen Gatsas and Guinta voted in opposition. Chairman Lopez broke the tie and voted in the affirmative. The motion carried.

Alderman Gatsas requested a minority report.

There being no further business, on motion of Alderman Smith, duly seconded by Alderman DeVries it was voted to adjourn.

A True Record. Attest.

Clerk of Committee